

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

JUL 14 1995

DO NOT WRITE ON THIS COPY ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
Preemption of Local	)	IB Docket No. 95-59
Zoning Regulation of	)	DA 91-577
Satellite Earth Stations	)	45-DSS-MISC-93

**COMMENTS OF THE ASSOCIATION  
FOR MAXIMUM SERVICE TELEVISION, INC.**

The Association for Maximum Service Television, Inc. ("MSTV") hereby files comments in response to the Notice of Proposed Rulemaking released in the above-captioned docket on May 15, 1995 (the "Notice").<sup>1/</sup>

**INTRODUCTION**

The Commission proposes to revise its rules regarding preemption of local zoning regulations that restrict the placement and operation of satellite antennas. Notice, at ¶ 46. The current preemption rule simply ensures that satellite antennas receive no less favorable treatment than other kinds of communications facilities.<sup>2/</sup> The Commission's proposed rule, however, would affirmatively protect satellite antennas from burdensome local regulations.

MSTV urges the Commission to expand the scope of this proceeding to address the problem of burdensome local zoning regulations not only for satellite antennas, but also

---

<sup>1/</sup> MSTV is a non-profit trade association of local broadcast television stations committed to maintaining and enhancing the highest technical quality for the local broadcast system.

<sup>2/</sup> See 47 C.F.R. § 25.104 ("State and local zoning or other regulations that differentiate between satellite receive-only antennas and other types of antenna facilities are preempted unless [certain conditions are satisfied]").

for all antennas, including VHF/UHF television antennas, broadcast towers and transmitting antennas. Although the proposed preemption rule appropriately protects federally-licensed satellite communications, other federally-licensed communications services deserve no less protection. The Commission should not afford greater protection to satellite antennas than it affords other kinds of communications services; there is no sound basis for according satellite antennas such special treatment.

Moreover, the extensive record developed by commenters in response to the Public Notice, released May 18, 1993, seeking comment upon petitions filed by Satellite Broadcasting and Communications Association (April 16, 1991) and Hughes Network Systems, Inc. (April 19, 1993), demonstrates that burdensome local zoning regulations either prohibit or greatly restrict the use of all types of antennas, not just satellite antennas. Based on this record, the Commission should take affirmative action to protect federally-licensed television broadcast operations from burdensome local regulations.

**I. THE COMMISSION SHOULD NOT ESTABLISH A PREFERENCE FOR SATELLITE COMMUNICATIONS AT THE EXPENSE OF NON-SATELLITE COMMUNICATIONS.**

The Commission's stated goal when it first established the current non-discriminatory preemption rule was to prohibit states from "arbitrarily favor[ing] one particular

communications service over another."<sup>3/</sup> In this Notice, the Commission reiterates that it is "very concerned about equal treatment for competing communications technologies. . . ." Notice, at ¶ 54.

Although the Commission has expressed its commitment for equal treatment and competition, the Notice clearly affords greater protection to satellite antennas than to other kinds of communication services.<sup>4/</sup> MSTV is concerned that this additional protection may come at the expense of non-satellite communications services.

For example, the record in this proceeding demonstrates that tower site availability is already limited in many areas. Extending a preference to satellite communications may have an anticompetitive impact on other

---

<sup>3/</sup> See Cellular Telecommunications Industry Association's Petition ("CTIA Petition") for Rule Making, RM-8577, at 15, n.33, filed on December 22, 1994 (citing Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations, Report and Order in CC Docket No. 85-87, at ¶¶ 23, 25 (released February 5, 1986)).

<sup>4/</sup> Moreover, the Commission should at least provide the viewing public and broadcasters with the same protection from state and local zoning regulations as is currently enjoyed by amateur radio hobbyists. See Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, PRB-1, 101 FCC 2d 952, 960 (1985) (state and local regulations that involve the placement, screening or height of amateur radio towers "must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose").

communications services that are vying for limited antenna sites.<sup>5/</sup>

Ironically, if the current non-discriminatory preemption rule, which was designed to prevent discrimination against satellite services, is amended to expressly favor satellite antennas, the discriminatory effect is likely to be more severe. An unintended consequence of the Commission's prior non-discriminatory preemption rule was that it permitted local zoning boards to ban or restrict antennas entirely. If the Commission's proposed new rule is limited to satellite antennas, zoning boards may simply amend their regulations to ban all antennas, except for satellite antennas.

In any case, the proposed rule does nothing to address the substantial record which demonstrates that burdensome regulations have been imposed on both UHF/VHF television antennas and broadcast television transmitter towers.<sup>6/</sup> This is especially problematic in rural or underserved areas in which UHF/VHF receive antennas are a necessity.

---

<sup>5/</sup> See Notice at 5-11; Comments of the National Association of Broadcasters ("NAB"), 45 DSS-MISC-93 (July 12, 1993).

<sup>6/</sup> See Comments of MSTV (July 12, 1993); Comments of NAB (July 12, 1993); Comments of Chris TV (February 28, 1992).

**II. THE COMMISSION'S PREEMPTION RULE SHOULD INCLUDE NON-SATELLITE ANTENNAS TO ENSURE EFFECTIVE IMPLEMENTATION OF BROADCAST ATV AND OTHER COMMUNICATIONS TECHNOLOGIES.**

It is more critical than ever that the Commission address the problem of burdensome local regulations that prohibit or restrict non-satellite antennas if the Commission intends to fulfill its mandate to "encourage the provision of new technologies and services to the public."<sup>1/</sup> Indeed, burdensome local zoning regulations threaten both the inauguration of new telecommunications services and the improvement of existing services.

The Advanced Television ("ATV") broadcasting service could be particularly vulnerable to the vicissitudes of local regulators. The transition to ATV broadcasting is expected to require construction of new equipment.<sup>8/</sup> Because of differences relating to digital transmission, it is likely that many homes that do not require outdoor antennas for NTSC broadcast reception today will require antennas for ATV reception. It is equally likely that many television stations that implement ATV will need to erect additional transmission antennas, and possibly new towers.<sup>9/</sup>

---

<sup>1/</sup> See 47 U.S.C. § 157(a).

<sup>8/</sup> See In the Matter of Advanced Television Systems and their Impact Upon the Existing Broadcast Service (Third Report and Order), 7 FCC Rcd 6924, 6937 (1992).

<sup>9/</sup> See Comments of MSTV, DS-1311, at 9 & n.14 (July 12, 1993); see also Comments of NAB (July 12, 1993) (describing difficulties that broadcasters have encountered in building antenna facilities and expressing concern that new technologies such as ATV and digital audio broadcasting may be  
(continued...)

Burdensome local zoning regulations also pose a significant obstacle to many other communications technologies. For example, the ability of cellular radio, common carrier microwave and business radio industries to construct and operate communications towers and antennas is vitally important, but is becoming increasingly difficult in the face of onerous local regulation of federally-licensed communications services.<sup>10/</sup> The Cellular Telecommunications Industry Association's recent Petition for Rule Making, which seeks the preemption of local zoning regulations that restrict or prohibit CMRS-related antennas, provides additional evidence of the growing problem facing Commission licensees.<sup>11/</sup>

Should the Commission decline at this time to extend the scope of the rule proposed in this proceeding to encompass non-satellite antennas, MSTV requests that the Commission establish a separate docket to resolve the problems posed by local regulation of non-satellite communications facilities, including home television antennas and transmitting antennas.<sup>12/</sup> Clearly, however, the logic of the Commission's

---

<sup>9/</sup> (...continued)  
difficult to implement if providers cannot put up new antennas).

<sup>10/</sup> Comments of NAB at 24, 28 (July 12, 1993).

<sup>11/</sup> See CTIA Petition.

<sup>12/</sup> In the alternative, MSTV requests that the Commission grant CTIA's Petition but expand it to include non-satellite broadcasting towers, antennas, and all other antenna-based communication services.

proposed preemption rule applies equally well to other technologies such as analog radio and television, future digital technology broadcast antennas, and new, nonbroadcast technologies such as PCS.<sup>13/</sup>

#### CONCLUSION

Rather than proceed on a piecemeal basis with the consequence of unequal treatment for competing and other antenna-based communications services, the Commission should promulgate a comprehensive preemption rule that applies to all antennas, not just satellite antennas. To do otherwise fails to address a significant problem, and, moreover, exacerbates the existing problem by impermissibly favoring one communication service over another.

Respectfully submitted,  
ASSOCIATION FOR MAXIMUM  
SERVICE TELEVISION, INC.

*Victor Tawil /x*

Victor Tawil  
Vice President  
Association for Maximum  
Service Television, Inc.  
1776 Massachusetts Ave., NW  
Suite 300  
Washington, D.C. 20036  
(202) 861-0344

*Deanna Conn*

Jonathan D. Blake  
Deanna Conn  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
P.O. Box 7566  
Washington, D.C. 20044  
(202) 662-6000

Its Attorneys

July 14, 1995

---

<sup>13/</sup> See Comments of NAB at 24 (July 12, 1993).